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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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BNSF RAILWAY COMPANY,
Plaintiff,
v.
ALAMEDA COUNTY, et al.,
Defendants.

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Case No. 19-cv-07230-HSG

**ORDER ESTABLISHING ESCROW
ACCOUNT AS SECURITY FOR
PRELIMINARY INJUNCTION**

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On April 8, 2020, the Court entered an order (Dkt. No. 65) granting the motion for preliminary injunction filed by Plaintiff BNSF Railway Company (“BNSF”). The Court’s order states that the Defendant Counties, “their boards of supervisors, county auditors, tax collectors, agents, employees, and all those acting in concert or participating with them who receive actual notice of this order (the “Enjoined Parties”) are hereby ENJOINED through the pendency of this litigation until entry of a final judgment from levying or collecting ad valorem property taxes from Plaintiff on its unitary property based on a tax rate higher than the annual average tax rate of general property taxation calculated and reported for each county by the California State Board of Equalization under Cal. Rev. & Tax Code § 11403.” The Court’s order further provides that “[t]he Enjoined Parties are further enjoined through the pendency of this litigation until entry of a final judgment from taking any action to impose any interest or penalties, from taking any action to record or enforce a tax lien upon any property used or owned by Plaintiff, or from taking any other action authorized by state law for delinquent or unpaid taxes under California law” with respect to taxes in excess of the amounts described above. The Court’s order states that “Plaintiff will be required to post a bond under Federal Rule of Civil Procedure 65(c)” and directs the parties to “meet and confer and agree if possible by 5:00 p.m. Pacific Time on April 9, 2020 regarding the

1 amount of the bond."

2 It is now further ordered that, for security under Rule 65(c):

- 3 (1) BNSF shall establish an interest-bearing escrow account with U.S. Bank National
4 Association, or another escrow agent agreed to by Defendants.
- 5 (2) BNSF shall deposit the enjoined amount for the 2019-2020 tax year into the escrow
6 account within thirty (30) days of the date on which this order is signed.
- 7 (3) During the pendency of the Court's injunction, BNSF shall deposit into the escrow
8 account the enjoined amounts for the 2020-2021 tax year and any future tax years on or
9 before the dates on which those amounts would be delinquent if paid as property taxes.
- 10 (4) The escrow agreement shall provide that no party may withdraw any amounts from the
11 escrow account without a Court order or the written agreement of all parties to this
12 lawsuit.
- 13 (5) BNSF shall provide Defendants with regular statements of the amounts in the escrow
14 account, including any accrued interest, and respond to reasonable requests for
15 information concerning the escrow account.
- 16 (6) Upon final judgment, the parties will seek a court order allocating the proceeds of the
17 escrow account, including all interest accrued in the escrow account, to the prevailing
18 party or parties, in accordance with its or their degree of success.

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20 **IT IS SO ORDERED.**

21 Dated: 4/10/2020

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23 HAYWOOD S. GILLIAM, JR.
24 United States District Judge
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